

SECOND REGULAR SESSION

SENATE BILL NO. 818

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LEMBKE.

Read 1st time January 25, 2010, and ordered printed.

TERRY L. SPIELER, Secretary.

4633S.011

AN ACT

To repeal sections 116.010, 116.020, 116.050, 116.060, 116.080, 116.090, 116.100, 116.120, 116.130, 116.175, 116.180, 116.190, and 116.332, RSMo, and to enact in lieu thereof thirteen new sections relating to initiative and referendum petitions, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 116.010, 116.020, 116.050, 116.060, 116.080, 116.090, 116.100, 116.120, 116.130, 116.175, 116.180, 116.190, and 116.332, RSMo, are repealed and thirteen new sections enacted in lieu thereof, to be known as sections 116.010, 116.020, 116.050, 116.060, 116.080, 116.090, 116.100, 116.120, 116.130, 116.175, 116.180, 116.190, and 116.332, to read as follows:

116.010. As used in this chapter, unless the context otherwise indicates, **the following terms mean:**

(1) "County" [means], any one of the several counties of this state or the city of St. Louis;

(2) "Day", a calendar day, including weekends and holidays;

(3) "Election authority" [means], a county clerk or board of election commissioners, as established by section 115.015, RSMo;

~~(3)~~ (4) "General election" [means], the first Tuesday after the first Monday in November in even-numbered years;

~~(4)~~ (5) "Official ballot title" [means], the summary statement and fiscal note summary prepared for all statewide ballot measures in accordance with the provisions of this chapter which shall be placed on the ballot and, when applicable, shall be the petition title for initiative or referendum petitions;

~~(5)~~ (6) "Statewide ballot measure" [means], a constitutional amendment

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

15 submitted by initiative petition, the general assembly or a constitutional
16 convention; a statutory measure submitted by initiative or referendum petition;
17 the question of holding a constitutional convention; and a constitution proposed
18 by a constitutional convention;

19 [(6)] (7) "Voter" [means], a person registered to vote in accordance with
20 section 115.151, RSMo.

116.020. 1. This chapter shall apply to elections on statewide ballot
2 measures. The election procedures contained in chapter 115, RSMo, shall apply
3 to elections on statewide ballot measures, except to the extent that the provisions
4 of chapter 116 directly conflict, in which case chapter 116 shall prevail, and
5 except to the extent that a constitutional convention's provisions under section
6 3(c) of article XII of the constitution directly conflict, in which case the
7 convention's provisions shall prevail.

8 **2. The power reserved by the people of this state under section**
9 **49, article III, Constitution of Missouri, to propose and enact or reject**
10 **laws and amendments to the Constitution of Missouri by the initiative,**
11 **independent of the general assembly, and to approve or reject by**
12 **referendum any act of the general assembly, shall be inviolate. No**
13 **mistake, error, omission by parties other than a person signing a**
14 **petition under this chapter, including but not limited to petition**
15 **circulators, proponents of a petition, any person involved in the**
16 **gathering of signatures for and the filing of a petition, and any**
17 **government official or employee, shall invalidate the signature of any**
18 **person signing a petition as long as the person's intent in signing the**
19 **petition is reasonably clear.**

116.050. 1. Initiative and referendum petitions filed under the provisions
2 of this chapter shall consist of pages of a uniform size. Each page, excluding the
3 text of the measure, shall be no larger than eight and one-half by fourteen
4 inches. Each page of an initiative petition shall be attached to or shall contain
5 a full and correct text of the proposed measure. Each page of a referendum
6 petition shall be attached to or shall contain a full and correct text of the measure
7 on which the referendum is sought.

8 2. The full and correct text of all initiative and referendum petition
9 measures shall:

10 (1) Contain all matter which is to be deleted included in its proper place
11 enclosed in brackets **or in a strike-through font**, and all new matter shown

12 underlined;

13 (2) Include all sections of existing law or of the constitution which would
14 be **explicitly** repealed by the measure; and

15 (3) Otherwise conform to the provisions of article III, section 28 and
16 article III, section 50 of the constitution and those of this chapter.

116.060. Any registered voter of the state of Missouri may sign initiative
2 and referendum petitions. However, each page of an initiative or referendum
3 petition shall contain signatures of voters from only one county. Each petition
4 page filed with the secretary of state shall have the county where the signers are
5 registered designated in the upper right-hand corner of such page. Signatures of
6 voters from counties other than the one designated by the circulator in the upper
7 right-hand corner on a given page shall not be counted as valid **unless such**
8 **voter, or the proponent of the petition, properly identifies the voter's**
9 **county of residence and shows proof of the voter's registration within**
10 **thirty days of the issuance of the certificate of sufficiency or**
11 **insufficiency by the secretary of state.**

116.080. 1. Each petition circulator shall be at least eighteen years of age
2 and registered with the secretary of state. Signatures collected by any circulator
3 who has not registered with the secretary of state pursuant to this chapter on or
4 before 5:00 p.m. on the final day for filing petitions with the secretary of state
5 shall not be counted **unless the signatories, or the proponent of the**
6 **petition, provide proof of the validity of the signatures within thirty**
7 **days of the issuance of the certificate of sufficiency or insufficiency by**
8 **the secretary of state.**

9 2. Each petition circulator shall supply the following information to the
10 secretary of state's office:

11 (1) Name of petition;

12 (2) Name of circulator;

13 (3) Residential address, including street number, city, state and zip code;

14 (4) Mailing address, if different;

15 (5) Have you been or do you expect to be paid for soliciting signatures for
16 this petition?

17 YES NO;

18 (6) If the answer to subdivision (5) is yes, then identify the payor;

19 (7) Signature of circulator.

20 3. The circulator information required in subsection 2 of this section shall

21 be submitted to the secretary of state's office with the following oath and
22 affirmation:

23 I HEREBY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT
24 ALL STATEMENTS MADE BY ME ARE TRUE AND CORRECT.

25 4. Each petition circulator shall subscribe and swear to the proper
26 affidavit on each petition page such circulator submits before a notary public
27 commissioned in Missouri. When notarizing a circulator's signature, a notary
28 public shall sign his or her official signature and affix his or her official seal to
29 the affidavit only if the circulator personally appears before the notary and
30 subscribes and swears to the affidavit in his or her presence.

31 5. Any circulator who falsely swears to a circulator's affidavit knowing it
32 to be false is guilty of a class A misdemeanor punishable, notwithstanding the
33 provisions of section [560.021] **560.016**, RSMo, to the contrary, for a term of
34 imprisonment not to exceed one year in the county jail or a fine not to exceed ten
35 thousand dollars or both.

116.090. 1. Any person who signs any name other than his own to any
2 petition, or who knowingly signs his or her name more than once for the same
3 measure for the same election, or who knows he or she is not at the time of
4 signing or circulating the same a Missouri registered voter and a resident of this
5 state, shall, upon conviction thereof, be guilty of a class A misdemeanor
6 punishable, notwithstanding the provisions of section [560.021] **560.016**, RSMo,
7 to the contrary, for a term of imprisonment not to exceed one year in the county
8 jail or a fine not to exceed ten thousand dollars or both.

9 2. Any person who knowingly accepts or offers money or anything of value
10 to another person in exchange for a signature on a petition is guilty of a class A
11 misdemeanor punishable, notwithstanding the provisions of section [560.021]
12 **560.016**, RSMo, to the contrary, for a term of imprisonment not to exceed one
13 year in the county jail or a fine not to exceed ten thousand dollars or both.

14 **3. (1) A person commits the crime of intentional**
15 **misrepresentation of a petition if the person knowingly and**
16 **fraudulently gathers signatures for a petition under this chapter. As**
17 **used in this subsection, "fraudulently gathering signatures" includes:**

18 **(a) Causing a voter to sign a petition other than the one the**
19 **voter intended to sign;**

20 **(b) Forging or falsifying signatures.**

21 **(2) Notwithstanding provisions of section 560.016 to the contrary,**

22 intentional misrepresentation of a petition is a misdemeanor
23 punishable by a term of imprisonment not to exceed one year in the
24 county jail, or by a fine not to exceed ten thousand dollars, or both
25 such imprisonment and fine.

26 4. (1) A person commits the crime of malicious obstruction of the
27 signing of a petition if the person maliciously intimidates, obstructs, or
28 otherwise prevents a voter from signing a petition under this chapter,
29 or if the person attempts to intimidate, obstruct, or otherwise prevent
30 a voter from signing a petition under this chapter.

31 (2) Notwithstanding provisions of section 560.016 to the contrary,
32 malicious obstruction of the signing of a petition is a misdemeanor
33 punishable by a term of imprisonment not to exceed one year in the
34 county jail, or by a fine not to exceed ten thousand dollars, or both
35 such imprisonment and fine.

36 (3) No reasonable effort to inform or educate a potential signer
37 of a petition shall be construed to be malicious obstruction of the
38 signing of a petition under this section.

116.100. The secretary of state shall not accept any referendum petition
2 submitted later than 5:00 p.m. on the final day for filing referendum
3 petitions. The secretary of state shall not accept any initiative petition submitted
4 later than 5:00 p.m. on the final day for filing initiative petitions. All pages shall
5 be submitted at one time. When an initiative or referendum petition is submitted
6 to the secretary of state, the signature pages shall be in order and numbered
7 sequentially by county, except in counties that include multiple congressional
8 districts, the signatures may be ordered and numbered using an alternate
9 numbering scheme approved in writing by the secretary of state prior to
10 submission of the petition. **Signature pages shall be arranged in file**
11 **folders, with no more than one hundred pages in each folder. Each file**
12 **folder shall be labeled with the contents, indicating the county in**
13 **which the signatures were gathered and the page numbers of the**
14 **signature pages in the folder.** Any [petition] folder that is not submitted in
15 accordance with this section, disregarding clerical and merely technical errors,
16 shall be rejected as insufficient. **All folders submitted in substantial**
17 **compliance with this section shall be accepted.** After verifying the count
18 of signature pages, the secretary of state shall issue a receipt indicating the
19 number of pages presented from each county. When a person submits a petition

20 he or she shall designate to the secretary of state the name and the address of the
21 person to whom any notices shall be sent under sections 116.140 and 116.180.

116.120. 1. When an initiative or referendum petition is submitted to the
2 secretary of state, he or she shall examine the petition to determine whether it
3 complies with the Constitution of Missouri and with this chapter. **Except as**
4 **provided in section 116.080**, signatures on petition pages that have been
5 collected by any person who is not properly registered with the secretary of state
6 as a circulator shall not be counted as valid. **Except as provided in section**
7 **116.190**, signatures on petition pages that do not have the official ballot title
8 affixed to the page shall not be counted as valid. The secretary of state may
9 verify the signatures on the petition by use of random sampling. The random
10 sample of signatures to be verified shall be drawn in such a manner that every
11 signature properly filed with the secretary of state shall be given an equal
12 opportunity to be included in the sample. The process for establishing the
13 random sample and determining the statistically valid result shall be established
14 by the secretary of state. Such a random sampling shall include an examination
15 of five percent of the signatures.

16 2. If the random sample verification establishes that the number of valid
17 signatures is less than ninety percent of the number of qualified voters needed
18 to find the petition sufficient in a congressional district, the petition shall be
19 deemed to have failed to qualify in that district. In finding a petition insufficient,
20 the secretary of state does not need to verify all congressional districts on each
21 petition submitted if verification of only one or more districts establishes the
22 petition as insufficient.

23 3. If the random sample verification establishes that the number of valid
24 signatures total more than one hundred ten percent of the number of qualified
25 voters needed to find the petition sufficient in a congressional district, the
26 petition shall be deemed to qualify in that district.

27 4. If the random sampling shows the number of valid signatures within
28 a congressional district is within ninety to one hundred ten percent of the number
29 of signatures of qualified voters needed to declare the petition sufficient in that
30 district, the secretary of state shall order the examination and verification of each
31 signature filed.

116.130. 1. The secretary of state may send copies of petition pages to
2 election authorities to verify that the persons whose names are listed as signers
3 to the petition are registered voters. Such verification may either be of each

4 signature or by random sampling as provided in section 116.120, as the secretary
5 shall direct. If copies of the petition pages are sent to an election authority for
6 verification, such copies shall be sent pursuant to the following schedule:

7 (1) Copies of all pages from not less than one petition shall be received in
8 the office of the election authority not later than two weeks after the petition is
9 filed in the office of secretary of state;

10 (2) Copies of all pages of a total of three petitions shall be received in the
11 office of the election authority not later than three weeks after the petition is
12 filed in the office of the secretary of state;

13 (3) If more than three petitions are filed, all copies of petition pages,
14 including those petitions selected for verification by random sample pursuant to
15 section 116.120, shall be received in the office of the election authority not later
16 than the fourth week after the petition is filed in the office of the secretary of
17 state.

18 Each election authority shall check the signatures against voter registration
19 records in the election authority's jurisdiction, but the election authority shall
20 count as valid only the signatures of persons registered as voters in the county
21 named in the circulator's affidavit. **Signatures of registered voters from**
22 **other counties may be reclaimed under section 116.060.** Signatures shall
23 not be counted as valid if they have been struck through or crossed out.

24 2. If the election authority is requested to verify the petition by random
25 sampling, such verification shall be completed and certified not later than thirty
26 days from the date that the election authority receives the petition from the
27 secretary of state. If the election authority is to verify each signature, such
28 verification must be completed, certified and delivered to the secretary of state
29 by 5:00 p.m. on the last Tuesday in July prior to the election, or in the event of
30 complete verification of signatures after a failed random sample, full verification
31 shall be completed, certified and delivered to the secretary of state by 5:00 p.m.
32 on the last Tuesday in July or by 5:00 p.m. on the Friday of the fifth week after
33 receipt of the signatures by the local election authority, whichever is later.

34 3. If the election authority or the secretary of state determines that the
35 congressional district number written after the signature of any voter is not the
36 congressional district of which the voter is a resident, the election authority or
37 the secretary of state shall correct the congressional district number on the
38 petition page. Failure of a voter to give the voter's correct congressional district
39 number shall not by itself be grounds for not counting the voter's signature.

40 4. The election authority shall return the copies of the petition pages to
41 the secretary of state with annotations regarding any invalid or questionable
42 signatures which the election authority has been asked to check by the secretary
43 of state. The election authority shall verify the number of pages received for that
44 county, and also certify the total number of valid signatures of voters from each
45 congressional district which the election authority has been asked to check by the
46 secretary of state.

47 5. The secretary of state is authorized to adopt rules to ensure uniform,
48 complete, and accurate checking of petition signatures either by actual count or
49 random sampling. No rule or portion of a rule promulgated pursuant to this
50 section shall become effective unless it has been promulgated pursuant to the
51 provisions of chapter 536, RSMo.

52 6. After a period of three years from the time of submission of the
53 petitions to the secretary of state, the secretary of state, if the secretary
54 determines that retention of such petitions is no longer necessary, may destroy
55 such petitions.

116.175. 1. Except as provided in section 116.155, upon receipt from the
2 secretary of state's office of any petition sample sheet, joint resolution or bill, the
3 auditor shall assess the fiscal impact of the proposed measure. The state auditor
4 may consult with the state departments, local government entities, the general
5 assembly and others with knowledge pertinent to the cost of the
6 proposal. Proponents or opponents of any proposed measure may submit to the
7 state auditor a proposed statement of fiscal impact estimating the cost of the
8 proposal in a manner consistent with the standards of the governmental
9 accounting standards board and section 23.140, RSMo, provided that all such
10 proposals are received by the state auditor within ten days of his or her receipt
11 of the proposed measure from the secretary of state.

12 2. Within twenty days of receipt of a petition sample sheet, joint
13 resolution or bill from the secretary of state, the state auditor shall prepare a
14 fiscal note and a fiscal note summary for the proposed measure and forward both
15 to the attorney general.

16 3. The fiscal note and fiscal note summary shall state the measure's
17 estimated cost or savings, if any, to state or local governmental entities. The
18 fiscal note summary shall contain no more than fifty words, excluding articles,
19 which shall summarize the fiscal note in language neither argumentative nor
20 likely to create prejudice either for or against the proposed measure.

21 4. The attorney general shall, within ten days of receipt of the fiscal note
22 and the fiscal note summary, approve the legal content and form of the fiscal note
23 summary prepared by the state auditor and shall forward notice of such approval
24 to the state auditor.

25 [5. If the attorney general or the circuit court of Cole County determines
26 that the fiscal note or the fiscal note summary does not satisfy the requirements
27 of this section, the fiscal note and the fiscal note summary shall be returned to
28 the auditor for revision. A fiscal note or fiscal note summary that does not satisfy
29 the requirements of this section also shall not satisfy the requirements of section
30 116.180.]

116.180. Within three days after receiving the official summary statement
2 the approved fiscal note summary and the fiscal note relating to any statewide
3 ballot measure, the secretary of state shall certify the official ballot title in
4 separate paragraphs with the fiscal note summary immediately following the
5 summary statement of the measure and shall deliver a copy of the official ballot
6 title and the fiscal note to the speaker of the house or the president pro tem of
7 the legislative chamber that originated the measure or, in the case of initiative
8 or referendum petitions, to the person whose name and address are designated
9 under section 116.332. Persons circulating the petition shall affix the official
10 ballot title to each page of the petition prior to circulation [and]. **Except as**
11 **provided in section 116.190**, signatures shall not be counted if the official
12 ballot title is not affixed to the page containing such signatures.

116.190. 1. Any citizen who wishes to challenge the official ballot title or
2 the fiscal note prepared for a proposed constitutional amendment submitted by
3 the general assembly, by initiative petition, or by constitutional convention, or for
4 a statutory initiative or referendum measure, may bring an action in the circuit
5 court of Cole County. The action [must] **shall** be brought within ten days after
6 the official ballot title is certified by the secretary of state in accordance with the
7 provisions of this chapter. **Changes to the official ballot title resulting**
8 **from actions brought later than ten days after the official ballot title is**
9 **certified by the secretary of state shall have no effect on the validity of**
10 **signatures collected on petition sheets that contain the original official**
11 **ballot title.**

12 2. The secretary of state shall be named as a party defendant in any
13 action challenging the official ballot title prepared by the secretary of
14 state. When the action challenges the fiscal note or the fiscal note summary

15 prepared by the auditor, the state auditor shall also be named as a party
16 defendant. **If the challenged ballot title is from an initiative or**
17 **referendum, and a party other than the proponent of the measure**
18 **initiates the challenge, the proponent shall receive copies of all**
19 **communications and court documents relating to the challenge as if the**
20 **proponent were a party defendant, and shall be allowed to intervene in**
21 **the case if the proponent seeks to intervene.** The president pro tem of the
22 senate, the speaker of the house and the sponsor of the measure and the
23 secretary of state shall be the named party defendants in any action challenging
24 the official summary statement, fiscal note or fiscal note summary prepared
25 pursuant to section 116.155.

26 3. The petition shall state the reason or reasons why the summary
27 statement portion of the official ballot title is insufficient or unfair and shall
28 request a different summary statement portion of the official ballot
29 title. Alternatively, the petition shall state the reasons why the fiscal note or the
30 fiscal note summary portion of the official ballot title is insufficient or unfair and
31 shall request a different fiscal note or fiscal note summary portion of the official
32 ballot title.

33 4. The action shall be placed at the top of the civil docket. Insofar as the
34 action challenges the summary statement portion of the official ballot title, the
35 court shall consider the petition, hear arguments, and in its decision certify the
36 summary statement portion of the official ballot title to the secretary of state
37 **within fifty-five days of the original certification by the secretary of**
38 **state.** Insofar as the action challenges the fiscal note or the fiscal note summary
39 portion of the official ballot title, the court shall consider the petition, hear
40 arguments, and in its decision[, either] certify the fiscal note or the fiscal note
41 summary portion of the official ballot title to the secretary of state [or remand the
42 fiscal note or the fiscal note summary to the auditor for preparation of a new
43 fiscal note or fiscal note summary pursuant to the procedures set forth in section
44 116.175] **within fifty-five days of the original certification by the**
45 **secretary of state.** Any party to the suit may appeal [to the supreme court]
46 within ten days after a circuit court decision. **The court of appeals shall**
47 **render a decision within thirty days of the filing of such appeal. Any**
48 **party to the suit may appeal to the supreme court within ten days of**
49 **the appeals court's decision. The supreme court shall render a decision**
50 **within thirty days of the filing of such appeal.** In making the legal notice

51 to election authorities under section 116.240, and for the purposes of section
52 116.180, the secretary of state shall certify the language [which] **certified by the**
53 court [certifies] to [him] **the secretary of state within twenty-four hours.**

116.332. 1. Before a constitutional amendment petition, a statutory
2 initiative petition, or a referendum petition may be circulated for signatures, a
3 sample sheet must be submitted to the secretary of state in the form in which it
4 will be circulated. When a person submits a sample sheet of a petition he or she
5 shall designate to the secretary of state the name and address of the person to
6 whom any notices shall be sent pursuant to sections 116.140 and 116.180. The
7 secretary of state shall refer a copy of the petition sheet to the attorney general
8 **within two business days of the submission of the petition** for his or her
9 approval and to the state auditor **within two business days of the**
10 **submission of the petition** for purposes of preparing a fiscal note and fiscal
11 note summary. The secretary of state and attorney general [must] **shall** each
12 review the petition for sufficiency as to form and approve or reject the form of the
13 petition, stating the reasons for rejection, if any.

14 2. Upon receipt of a petition from the office of the secretary of state, the
15 attorney general shall examine the petition as to form. If the petition is rejected
16 as to form, the attorney general shall forward his or her comments to the
17 secretary of state within ten days after receipt of the petition by the attorney
18 general. If the petition is approved as to form, the attorney general shall forward
19 his or her approval as to form to the secretary of state within ten days after
20 receipt of the petition by the attorney general.

21 3. The secretary of state shall review the comments and statements of the
22 attorney general as to form and make a final decision as to the approval or
23 rejection of the form of the petition. The secretary of state shall send written
24 notice to the person who submitted the petition sheet of the approval within
25 **[thirty] fifteen** days after submission of the petition sheet. The secretary of
26 state shall send written notice if the petition has been rejected, together with
27 reasons for rejection, within **[thirty] fifteen** days after submission of the petition
28 sheet.

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